

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
NORTHERN DIVISION**

IN RE:

**GUY V. FORRESTER, SR. and
KIMBERLY M. FORRESTER,**

**Bankruptcy Case Number
19-81307-CRJ13**

Debtors.

MOTION TO APPROVE ALLOCATION OF SETTLEMENT PROCEEDS

COME NOW, Debtors Guy Forrester Sr. and Kimberly Forrester (hereinafter “Plaintiffs”) and hereby file this Motion to Approve Allocation of Settlement Proceeds, and say as follows:

JURISDICTION AND VENUE

1. The Plaintiffs filed the above styled Adversary Proceeding against MidFirst in May, 2018 alleging violations of the automatic stay (“**Adversary Proceeding**”). This Adversary Proceeding is one of six adversary proceedings filed against MidFirst in this Court by different debtors which alleged nearly identical stay violations.
2. Thereafter, MidFirst filed Motions to Withdraw the General Order of Reference (the “**Motions to Withdraw**”) in all six adversary proceedings. The United States District Court for the Northern District of Alabama entered Orders¹ granting MidFirst’s Motions to Withdraw the Reference and the lawsuits were thereafter consolidated before District

¹ Mitchell and Belinda Chappell v. MidFirst Bank, Case No. 18-cv-01398 (N.D. Ala.) (Doc. 9); Brenda Cole v. MidFirst Bank, Case No. 18-cv-01402 (N.D. Ala.) (Doc. 10); James Moore v. MidFirst Bank, Case No. 18-cv-01413 (N.D. Ala.) (Doc. 10); Senderella Moore v. MidFirst Bank, Case No. 18-cv-01414 (N.D. Ala.) (Doc. 9); Guy and Kimberly Forrester v. MidFirst Bank, Case No. 18-cv-1392 (N.D. Ala.) (Doc. 10); James and Beverly Love v. MidFirst Bank, Case No. 19-cv-00004 (N.D. Ala.) (Doc. 5).

Court Judge Liles C. Burke (*See* Doc. 12, Case Number 5:18-cv-01392-LCB). There are nine separate plaintiffs (the “**Plaintiffs**”) in the six adversary proceedings.

3. This Court has jurisdiction over this Application pursuant to 28 U.S.C. § 1334(b). This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A).

RELIEF REQUESTED

4. After negotiation and in the interest of avoiding the uncertainties associated with litigation, Plaintiffs and Defendant have reached a settlement of the claims asserted in this adversary proceeding subject to this Court’s approval.
5. On November 15, 2019 the Plaintiffs and Defendant filed their Joint Motion to Approve Compromise and Settlement (“Settlement Motion”) [Doc. 71]. As stated in the Settlement Motion the gross amount of the settlement proceeds is \$180,000 (“Settlement Proceeds”). The Settlement Motion specifically provides that the distribution of the Settlement Proceeds is subject to further Orders from this Court. A hearing on the Settlement Motion is scheduled for December 3, 2019 since the United States District Court has given the parties until December 16, 2019 to complete all appropriate paperwork and file a stipulation of dismissal in that action.
6. Plaintiffs therefore request that the Court authorize the undersigned attorneys to distribute the Settlement Proceeds, as follows:

<u>Plaintiff/Debtor</u>	<u>Gross Settlement Amount</u>	<u>Setoff Amount Due MidFirst</u>	<u>Trustee</u>	<u>Attorney Fees JLL</u>	<u>Attorney Fees HAD</u>	<u>Costs HAD</u>	<u>Net Amount to Client as Allowed by Exemptions</u>
Beverly Love BK 17-8917	\$20,000	\$3,985.24	\$2,000	\$5,888.88	\$5,888.88	\$301.49	\$1,935.51
Estate of James Love BK 17-80917	\$20,000		\$2,000	\$5,888.88	\$5,888.88	\$301.49	\$5,920.75

James Moore BK 17-81041	\$20,000	\$396.84 ²	\$2,000	\$5,888.88	\$5,888.88	\$301.49	\$5,523.91
Senderella Moore (Ch. 7) BK. 17-81064	\$20,000	\$396.84 ³	\$2,000 ⁴	\$5,888.88	\$5,888.88	\$301.49	\$5,523.91
Guy Forrester BK 13-82509	\$20,000	\$477.38 ⁵	\$2,000	\$5,888.88	\$5,888.88	\$301.49	\$5,443.37
Kim Forrester BK 13-82509	\$20,000	\$477.38 ⁶	\$2,000	\$5,888.88	\$5,888.88	\$301.49	\$5,443.37
Brenda Cole BK 17-82036	\$20,000	-0-	\$2,000	\$5,888.88	\$5,888.88	\$301.49	\$5,920.75
Mitchell Chappell BK 17-83497	\$20,000	-0-	\$2,000	\$5,888.88	\$5,888.88	\$301.49	\$5,920.75
Belinda Chappell BK 1783497	\$20,000	-0-	\$2,000	\$5,888.88	\$5,888.88	\$301.49	\$5,920.75

7. As shown above, it is proposed that the undersigned counsel be authorized to pay the sum of \$2,000 per plaintiff (except for S. Moore who converted to Chapter 7) to Michele Hatcher as Chapter 13 Trustee whose address is 3789 Momentum Place, Chicago, IL 60689-5337. It is further requested that the Chapter 13 Trustee be authorized to distribute proceeds received by her to the allowed claims of unsecured creditors, increase the base amount due under the Plan by the amount of proceeds she receives, and further that the Trustee be allowed to take a fee on the funds disbursed to the Plaintiffs as allowed by her exemptions.

8. Also as shown above, the undersigned counsel seeks authority to pay MidFirst those sums shown above which are subject to set-off in the case of Beverly Love and the Estate of James Love in the amount of \$3,985.24; James and Senderella Moore in the amount of

² This sum is one-half the existing post-petition mortgage arrearage owed to MidFirst by the Debtor.

³ This sum is one-half the existing post-petition mortgage arrearage owed to MidFirst by the Debtor.

⁴ These funds are actually paid to Tazewell Shepard, Chapter 7 Trustee since Mrs. Moore converted her case to Chapter 7 on or about November 14, 2019.

⁵ This sum is one-half the existing post-petition mortgage arrearage owed to MidFirst by the Debtor.

⁶ This sum is one-half the existing post-petition mortgage arrearage owed to MidFirst by the Debtor.

\$793.68 and Guy and Kimberly Forrester in the amount of \$984.77. These sums are for post-petition mortgage arrearages. *See, In re Ward* 210 BR 531, 536 (Bankr. E.D. Va. 1997) (general rule appears to be that so long as the requisite mutuality exists, post-petition debts may be set off against each other). See also, *Citizens Bank of Maryland v. Strumpf*, 516 U.S. 16, 17, 116 S.Ct. 286, 289, 133 L.Ed.2d 258 (1995)(the right of setoff allows entities that owe each other money to apply their mutual debts against each other, thereby avoiding ‘the absurdity of making A pay B when B owes A.’).

9. As shown above, the undersigned counsel also seeks authority to pay a total sum of \$53,000 to John Larsen of Larsen Law P.C. for payment of attorney fees incurred by him in representing the Plaintiffs in all nine cases.⁷
10. Also as shown above, the undersigned counsel seeks authority to pay the sum of \$53,000 to Kevin D. Heard of Heard Ary & Dauro, LLC for payment of attorney fees incurred by him in representing the Plaintiffs in all nine cases and \$2,713.48 for reimbursement of actual expenses in the amounts determined by this Court.⁸
11. Also as shown above, the undersigned counsel seeks authority to pay the sum of \$5,443.37 to Plaintiff Kim Forrester and the sum of \$5,443.37 to Guy Forrester or such other amounts as this Court orders.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs respectfully request that the Court approve the allocation of the Settlement Proceeds as provided for herein as well as grant Plaintiffs such further and additional relief as may be just and proper.

⁷ Mr. Larsen has or will be submitting his separate application for compensation and reimbursement of expenses in this case pursuant to §§327 and 330 of the Bankruptcy Code.

⁸ Mr. Heard has or will be submitting his separate application for compensation and reimbursement of expenses in this case pursuant to §§327 and 330 of the Bankruptcy Code.

Respectfully submitted this 21st day of November, 2019.

/s/ Kevin D. Heard
Kevin D. Heard
Special Counsel for Plaintiff

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CERTIFICATE OF SERVICE

I hereby certify that on this the 21st day of November, 2019, I served a copy of the foregoing pleading on the parties listed below through electronically filing the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to all counsel of record, and/or by mailing same by United States mail, properly addressed, and first-class postage prepaid:

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